

SENATE BILL 1971

By Massey

AN ACT to amend Tennessee Code Annotated, Section 47-9-513 and Title 66, Chapter 21, Part 1, relative to liens on real property.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, Chapter 21, Part 1, is amended by adding the following new section:

(a) As used in this section, "public official" means:

(1) An individual who is a current or retired elected or appointed government official, including a state, county, metropolitan, or municipal official;

(2) An individual who is the head of a division or major unit or department within an agency or office of the executive, judicial, or legislative branch of state, county, metropolitan, or municipal government, regardless of the title of the position, and who, as a substantial part of the individual's duties, provides meaningful input on the development of policy goals or the implementation of policy;

(3) A high-ranking employee within the executive, judicial, or legislative branch of state, county, metropolitan, or municipal government who has a primary responsibility for one (1) or more of the following functions:

(A) Public information and legislative affairs;

(B) Fiscal, budget, and audit matters;

(C) Legal, security, or internal affairs;

(D) Information technology systems; and

(E) Human resources;

(4) A first responder, as defined in § 29-34-203; or

(5) A law enforcement officer, as defined in § 39-11-106.

(b)

(1) A public official who is the subject of a lien or other encumbrance, or any other document that reasonably constitutes a cloud on the title of a real property interest, filed with the register of any county, may file with the register a notarized affidavit, signed under penalty of perjury, that contains:

(A) A document number or other similar information identifying the document at issue;

(B) The affiant's mailing address;

(C) A statement that the affiant is a public official; and

(D) A statement that the affiant believes that the document was filed without any reasonable basis or legal cause, and the affiant's factual basis for why the filed document lacks any reasonable basis or legal cause.

(2) The secretary of state shall adopt a form of affidavit for use under subdivision (b)(1) and a form of certification for use under subsection (f).

(c) Once an affidavit is filed with the register pursuant to subdivision (b)(1), the register shall indicate on the document and any available indices that the document is "Contested - Under Review."

(d)

(1) Within three (3) business days of receipt of an affidavit filed pursuant to subdivision (b)(1), the register shall send a copy of the

affidavit, by registered or certified mail, with return receipt requested, addressed to the lienor at the address listed in the lien document.

(2) The copy of the affidavit shall be deemed delivered upon:

(A) Acceptance by the filing party;

(B) A showing that the filing party refused to accept delivery and it is so stated in the return receipt of the United States postal service; or

(C) The United States postal service returning the affidavit as undeliverable or unclaimed.

(3) The refusal or failure of the filing party to accept delivery of the registered or certified mail, or the refusal or failure to sign the return receipt, shall not affect the validity of delivery of the affidavit, and a filing party who refuses or fails to accept delivery of such registered or certified mail shall be charged with knowledge of the contents of the affidavit.

(4) Once the register receives the return receipt, notice of refusal or failure to sign the return receipt, or notice that the affidavit is undeliverable, the twenty (20) business days referenced in subsection (e) will commence.

(5) If the lien, encumbrance, or other document described in subdivision (b)(1) does not contain the name or address of the filing party, plaintiff, complainant, lienor, or owner of the lien, upon receipt of the affidavit noted in subdivision (b)(1), the register shall void and remove from the public record the lien, encumbrance, or other document along with all other associated documents.

(e)

(1) Within twenty (20) business days of delivery of the affidavit to the filing party, a filing party who believes in good faith that the lien or other document was filed with a reasonable basis or legal cause, may file an action seeking such a determination in the chancery court of the county where the document was filed pursuant to title 29, chapter 14. The action shall name the public official as an interested party in its caption.

(2) A petition filed pursuant to subdivision (e)(1) shall set forth the factual basis showing that the filed lien or document was filed with a reasonable basis or legal cause, and must be accompanied by a cost bond in the amount of two hundred dollars (\$200). The cost bond required pursuant to this subdivision (e)(2) does not apply to any financial institution that is insured by the federal deposit insurance corporation, insured by the national credit union administration, or regulated by the farm credit administration.

(3) Any person who shares a property interest with the public official that is adversely affected by the lien or other document may join in the action as an interested party.

(4) Following a reasonable period for responsive pleadings and discovery, the chancellor shall preside over a hearing at which proof may be offered on the issues raised and shall make a determination as to whether the document was filed with any reasonable basis or legal cause at the close of the proceedings.

(f) If within twenty (20) business days of delivery of the affidavit to the filing party under subdivision (d) a petition and cost bond has not been filed as

required by subdivision (e)(2), the public official may present to the register a certification, signed by the public official under penalty of perjury and verified by the clerk and master, stating that no petition has been filed. Upon filing of a certification, the register shall void and remove from the public record the document along with all other filings associated with the document, including the affidavit. The register shall maintain a reference copy of the document and all other filings associated with the document, but the reference copy shall not be indexed or otherwise maintained with other documents reflecting a recorded interest in real property.

(g) If, following the hearing on a petition filed under subsection (e), the chancellor determines that there is reasonable basis or legal cause for the filing of the document, upon receipt of a final, unappealable judgment, the register shall remove the "Contested - Under Review" indication from the public records and the effectiveness of the document will be reflected as the original date of filing.

(h) If, following the hearing on a petition filed under subsection (e), the chancellor determines that the document was filed without any reasonable basis or legal cause, upon receipt of a final, unappealable judgment, the register shall void and remove from the public record the document along with all other associated documents. The register shall maintain a copy of the judgment along with a reference copy of the document and all other filings associated with the document, but the reference copy shall not be indexed or otherwise maintained with other documents reflecting a recorded interest in real property.

(i) The prevailing party in any action filed pursuant to subsection (e), including any person sharing a property interest with the public official, may

recover costs and expenses, including reasonable attorneys' fees that are incurred in the action.

(j) Any governmental entity, as defined in § 29-20-102, may elect to insure or indemnify any public official for the cost of defending and removing liens or encumbrances described in this section, or any financing statements similarly filed and challenged pursuant to § 47-9-513(e), and for any other costs related to defending and removing a lien or encumbrance, but not including consequential damages. Any insurance or indemnification pursuant to this subsection (j) must be upon terms and conditions as the governmental entity establishes.

SECTION 2. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2018, and shall apply to liens regardless of when filed, the public welfare requiring it.